

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 SEAN MAURICE DEAN,

4 Plaintiff

5 v.

6 GARY D. WOODBURY,

7 Defendant

Case No.: 3:22-cv-00150-MMD-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF Nos. 1, 1-1

8 This Report and Recommendation is made to the Honorable Miranda M. Du, Chief
9 United States District Judge. The action was referred to the undersigned Magistrate Judge
10 pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

11 Plaintiff has filed an application to proceed in forma pauperis (IFP) (ECF No. 1) and pro
12 se civil rights complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1-1).

13 Plaintiff brings his complaint pursuant to 42 U.S.C. § 1983. However, he only sues his
14 former criminal defense attorney, Gray D. Woodbury, under the Sixth Amendment for
15 ineffective assistance of counsel. Such a claim must be raised in a direct appeal, post-conviction
16 or habeas proceeding, and not in an action under section 1983. *See Nelson v. Campbell*, 541 U.S.
17 637, 643 (2004); *Morgano v. Smith*, 879 P.2d 735 n. 3, 110 Nev. 1025 (1994); Nev. Rev. Stat.
18 34.810(1)(b), 34.720, *et. seq.* Where a state habeas remedy is available, a plaintiff cannot seek
19 federal habeas relief until he has first sought and been denied habeas relief in state courts.
20 *Preiser v. Rodriguez*, 411 U.S. 475, 477 (1973); 28 U.S.C. §§ 2241-66.

21 This action should be dismissed without prejudice and the IFP application should be
22 denied as moot so that Plaintiff can bring his claim utilizing the proper procedural channels.
23

RECOMMENDATION

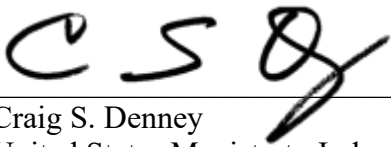
IT IS HEREBY RECOMMENDED that the District Judge enter an order **DISMISSING** this action **WITHOUT PREJUDICE** and **DENYING AS MOOT** Plaintiff's IFP application (ECF No. 1).

Plaintiff should be aware of the following:

1. That he may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to this Report and Recommendation within fourteen days of being served with a copy of the Report and Recommendation. These objections should be titled "Objections to Magistrate Judge's Report and Recommendation" and should be accompanied by points and authorities for consideration by the district judge.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed until entry of judgment by the district court.

Dated: June 7, 2022


Craig S. Denney
United States Magistrate Judge